

Message Text

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PAGE 01 GUATEM 02688 052256Z
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R 052149Z MAY 78
FM AMEMBASSY GUATEMALA
TO SECSTATE WASHDC 186
INFO AMEMBASSY SAN SALVADOR

UNCLAS GUATEMALA 2688

E.O. 11652:N/A
TAGS: EIND GT
SUBJ: TRADEMAK APPLICATION FOR LOLLY-POPS

REF: A. GUATEMALA A-74 OF JUNE 29, 1977, B. GUATEMALA 2634

1. EMBASSY HAS RECEIVED COPY OF MINISTRY OF ECONOMY NOTE DATED APRIL 5, 1978 STATING THAT OBJECTION TO REGISTRATION OF LOLLY-POPS, HAS BEEN OVERRULED AND THAT IT CAN BE REGISTERED AS TRADEMARK IN GUATEMALA. REASONS GIVEN IN NOTE ARE THAT NAME MEETS REQUIREMENTS OF NOVELTY, SPECIALTY AND ABILITY TO BE REGISTERED PROVIDED FOR BY LOCAL LAWS, IS NOT AN EXPRESSION THAT DIRECTLY OR INDIRECTLY DESCRIBES THE QUALITIES, CONTENT OR NATURE OF MANUFACTURED OR COMMERCIAL FOOD PRODUCTS PRESENTLY PRODUCED IN GUATEMALA, NOR IS IT PROVEN THAT PERSON OR ENTITIES HOLD BETTER RIGHTS TO IT. IN ADDITION, NOTE STATES THAT IT IS DULY REGISTERED IN A FOREIGN COUNTRY (FYI.EL SALVADOR) CONSTITUTING THEREFORE A BASIC PREVIOUS RECORD THAT PROVES THE NON-GENERIC USE OF THE NAME. COPY OF THE NOTE ON LOLLY-POPS PLUS INFORMAL TRANSLATION IS BEING POUCHED TO STATE AND COMMERCE.

2. DURING METING WITH EMBOF MAY 4, GUATEMALA'S REGISTRAR OF INDUSTRIAL PROPERTY, ORLANDO MARSICOVETERE, SAID THAT ANOTHER REASON THAT OBJECTION TO REGISTRATION OF LOLLY-POPS HAD BEEN TURNED DOWN AND UNSTATED IN NOTE
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WAS THAT IT DID NOT MEET GUATEMALA'S LEGAL REQUIREMENTS IN THAT IT HAD BEEN PRESENTED BY EMBASSY OFFICER RATHER THAN GUATEMALAN LAWYER. EMBOF POINTED OUT THAT MARSICOVETERE HIMSELF HAD ADVISED US TO PRESENT OBJECTION AS WE DID AND AT NO TIME DID HE OR MINISTRY OF ECONOMY INFORM US OTHERWISE. IN RESPONSE TO EMBOF QUESTION, MARSICOVETERE DID SAY US FIRM COULD, IF IT WISHED, APPEAL

LOLLY-POPS DECISION THROUGH GUATEMALAN LAWYER.

3. EMBASSY RECOMMENDS THAT IN ALL CASES IN WHICH US FIRM OBJECTS TO REGISTRATION OF TRADEMARK IN GUATEMALA IT DIRECTLY OBTAIN SERVICES OF GUATEMALAN LAWYER TO REPRESENT IT. IN THIS REGARD, US ASSOCIATION OF TRADEMARKS MAY WISH TO NAME ONE LAWYER HERE TO REPRESENT ITS MEMBERS AS THESE CASES ARISE.

4. EMBASSY ALSO WISHES TO POINT OUT WHAT APPEARS TO BE SERIOUS OBSTACLE TO US FIRMS HAVING THEIR OBJECTIONS TO REGISTRATION OF US GENERIC NAMES ACCEPTED IN GUATEMALA. THAT IS VIEW VOICED BY MARSICOVETERE TO EMBOV IN MEETING AND USED AS RATIONALE IN MINISTRY'S DECISION RE LOLLY-POPS THAT SUCH TERMS HAVE NO MEANING IN SPANISH AND THEREFORE CANNOT BE PREVENTED FROM BEING REGISTERED LOCALLY AS GENERIC NAME. THIS PROBLEM COULD ARISE AGAIN WITH CORN CHIPS AND WE UNDERSTAND THAT EFFORT IS NOW BEING MADE HERE TO REGISTER WORD "PRETZEL" AS TRADEMARK. EMBASSY IS NOT IN A POSITION TO DETERMINE THE LEGAL MERITS OF THIS VIEW AND REQUESTS CLARIFICATION, COMMENTS AND RECOMMENDATIONS, IF ANY, FOR ACTION. WE UNDERSTAND THAT THE INTER-AMERICAN CONVENTION ON TRADEMARKS PROTECTION OF 1929 IS STILL PERTINENT LAW.
BOSTER

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